

CROWN LAW

VICTIMS OF CRIME –
GUIDANCE FOR PROSECUTORS

As at 6 December 2014



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PURPOSE

1. The Victims' Rights Act 2002 (the Act) sets out certain requirements for those who deal with victims of crime. The Act imposes obligations on prosecutors as well as investigating authorities, with a view to enhancing the treatment and rights of victims.
2. The purpose of this protocol is to provide guidance to prosecutors dealing with victims of crime in accordance with the requirements and the spirit of the Act.
3. The Solicitor-General expects all prosecutors, whether conducting public prosecutions or Crown prosecutions, to comply with this protocol. The term "prosecutor" is used throughout and includes Crown prosecutors, Crown Law staff, prosecutors from government agencies and instructed counsel.
4. This protocol is made pursuant to the *Solicitor-General's Prosecution Guidelines* 2013. To the extent there is any inconsistency between those Guidelines and this protocol, the protocol is to be preferred.

VICTIMS OF CRIME

5. In this protocol the term "victim" has the meaning given to it by s 4 of the Act. It includes a person against whom an offence is committed and:
 - 5.1 The immediate family members of a victim who, as a result of an offence, is deceased or who is incapable of looking after his or her own affairs;
 - 5.2 The parents or legal guardians of a victim who is a child or young person.

PRINCIPLES

6. The overarching principles for prosecutors to follow when dealing with a victim of crime are:
 - 6.1 To treat the victim with courtesy and compassion; and
 - 6.2 To respect the victim's dignity and privacy.
7. The key means of observing these principles is through the provision of information to ensure the victim understands what is happening at each stage. The prosecutor should explain to the victim, or have the officer or investigator in charge or a Victim Adviser explain, the court process and procedure. The prosecutor should keep the victim informed of what is happening during the course of the proceeding.
8. Prosecutors should seek to protect the victim's interests as best they can whilst fulfilling their duty to the court and in the conduct of the prosecution on behalf of the Crown.

ROLE OF PROSECUTOR

9. The prosecutor acts in the public interest when conducting a prosecution and does not act for a victim or the family of a victim in the same way as other lawyers act for their clients. Prosecutors must nonetheless always be mindful of the consequences for the

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victim, and take appropriate cognisance of views expressed by the victim or the victim's family, in relation to any significant decision relating to the proceedings.

10. Prosecutors should ensure the victim has a clear understanding of the proper role of the prosecutor.

INFORMATION ABOUT PROCEEDINGS

11. Victims must be given certain information relating to the prosecution of the offence committed against them. The prosecutor should liaise with the officer or investigator in charge to ensure the victim is kept duly informed regarding:
 - 11.1 What charges have been filed and any changes that are made to those charges. It is important that charging decisions are properly explained to the victim.
 - 11.2 What the victim's role entails as a witness for the prosecution.
 - 11.3 The date and place of the defendant's first appearance in court, any pre-trial hearings and the trial itself. The victim must also be advised of the outcome of the prosecution (including conviction, acquittal or a finding that the defendant is unfit to stand trial).
12. Information may be given to the victim and/or the victim's support person, which includes a person nominated by the victim in writing to receive information on his or her behalf.
13. When there are very large numbers of victims (as may be the case, for example, with serious financial crime) it may not be practicable to identify or contact each victim individually. Prosecutors may consider alternative ways of meeting their obligations under the Act to provide information about proceedings. For example, information may be provided on a website or via an enquiries line. In these cases, victims must be made aware of how they should go about accessing the information.

ASSISTANCE FOR VICTIMS

14. Prosecutors should ensure the victim has been referred to Court Services for Victims (Victim Advisers). Victim Advisers can assist by explaining the court process, ascertaining and communicating the views of the victim and, when the victim is to attend court, showing the victim the courtroom. They can also ensure that a victim with special needs has an appropriate support person organised to be in the courtroom if required and that any other special arrangements for the trial are made.

VULNERABLE VICTIMS

15. Certain victims have special requirements. Prosecutors must be particularly mindful of the needs of victims of sexual offending, child victims and those who have been the victims of crime involving a death.
16. In respect of these victims, the prosecutor should before the trial:

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- 16.1 Ensure that arrangements have been made for the victim to meet with a Victim Adviser (or a specialist support worker where available), and consider, in conjunction with the Victim Adviser, whether special arrangements for the trial are required. This might include the setting aside of an allocated room for the victim to wait in before giving evidence.
 - 16.2 In relevant cases, ensure that any alternative means of giving evidence (e.g. behind a screen) is shown and explained to the victim.
 - 16.3 Personally meet with a victim of sexual offending, child victims and victims of offending where death has resulted to discuss the giving of evidence, the court process and any issues which are likely to arise.
17. Prosecutors should on request meet the family of someone killed as a result of a crime and explain a decision on a prosecution. In any case involving a death the prosecutor has a role to play in minimising the additional distress criminal proceedings are likely to cause to a victim's family and friends. The bereaved family are likely to be acutely concerned about any major decision taken in the case, e.g. to change the charge or accept a plea to an alternative or lesser charge, or to terminate the proceedings.
 18. Prosecutors should also be conscious of any special requirements that other vulnerable classes of victims might have. For example, the above requirements are likely to be equally relevant to a victim with intellectual disabilities and, in some cases, a victim with English as a second language.

BAIL

19. If the victim is a victim of a specified offence (primarily offences of a sexual nature under Part 7 of the Crimes Act 1961 or other serious assault, and offences causing injury, death or incapacity or raising safety concerns) prosecutors appearing at a bail hearing must obtain, and convey to the court, the victim's views on the application. The prosecutor should explain to the victim that their views on bail will not be determinative, and that the court will need to consider a range of factors when coming to its decision.

NAME SUPPRESSION

20. In any case where name suppression of the defendant is sought, the prosecutor must ensure the views of the victim are put before the court.
21. The prosecutor must also advise the victim of the applicable statutory provisions regarding suppression of their name and other identifying particulars. The victim must be given information regarding the possibility (if any) of the court making an order prohibiting the publication of identifying information about them, and what steps they may take in relation to the making of that order. Where the victim's name and identifying details have been automatically suppressed, the prosecutor should ensure the victim is aware of the ability for victims over the age of 18 years to apply to the court for an order permitting publication.

DISCLOSURE OF VICTIM'S CONTACT DETAILS

22. Prosecutors should be mindful of the requirement for judicial leave where evidence, or other information provided to the court, discloses (or may lead to the disclosure of) the victim's contact details (including the victim's residential address, email address or telephone numbers).

MATTERS RELATING TO THE TRIAL

ALTERNATIVE WAYS OF GIVING EVIDENCE

23. The Evidence Act 2006 allows a judge to give directions for witnesses to give evidence in an alternative way, such as by audio-visual means or using screens. In each case, the prosecutor should consider carefully whether a particular mode of evidence is appropriate and would improve the quality of the evidence given.
24. Where the victim is a victim of sexual offending or serious violent offending, the prosecutor should always consider making a mode of evidence application. The victim should be advised of the availability of alternative modes of evidence and their informed view ascertained.
25. Under s 107 of the Evidence Act 2006 prosecutors must apply to the court for directions about the way in which a child complainant is to give their evidence-in-chief and be cross-examined in a criminal proceeding.

SECURITY OF SENSITIVE EVIDENCE

26. Prosecutors should have processes in place and provide facilities to protect sensitive evidence such as video recorded interviews. The internet and other technology means it is impossible to prevent distribution of such evidence if it falls into the wrong hands.
27. Each Crown Solicitor's office should have a register of such evidence to track who has received it, and the ability to secure evidence within the office.

RESTORATIVE JUSTICE MEETINGS

28. Prosecutors should be aware of the requirements of s 9 of the Act and s 24A of the Sentencing Act 2002 in relation to restorative justice meetings, and be able to assist victims who wish to participate in such processes to access them.

SENTENCING

29. The prosecutor is required to make all reasonable efforts to ensure that information is ascertained from the victim about the impact of the offending for submission to the Judge sentencing the offender. The victim must be informed prior to giving the information that it will be used for a victim impact statement, and that the statement may be used in sentencing the offender or providing a sentence indication. A full, detailed, up to date and verified victim impact statement should be obtained from the victim and, where appropriate, the victim's immediate family members, by the officer or investigator in charge (at the prosecutor's direction).

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30. The prosecutor must ensure the victim is properly informed of the purpose of the victim impact statement as set out in s 17AB of the Act, and has access to the Ministry of Justice’s Victim Impact Statement Guidelines.
31. It is the prosecutor’s duty to ensure the statement is a true reflection of the effects of the offending on the victim. It should not contain any irrelevant material or material that is inconsistent with the purpose of a victim impact statement. Prosecutors must exercise their judgment in reviewing victim impact statements which contain such material. Prosecutors should liaise with the officer or investigator in charge to explain to the victim why such passages may need to be removed.
32. The prosecutor may consider there are others disadvantaged such that it is appropriate to seek the leave of the Judge to accept a victim impact statement from those people.
33. Prosecutors should discuss with the victim how they would like their statement presented to the court. If the victim wishes to read their statement at sentencing, or have the prosecutor or other nominated person read it, the prosecutor must facilitate the victim’s request to the Judge. It should be explained to the victim that the Judge may or may not allow the statement to be read and what factors will be relevant to the Judge’s decision. In some cases, the Judge may agree to a victim’s statement being presented in a manner other than by reading it (for example, if the information ascertained from the victim has been recorded on an audiotape, by playing that audiotape). It is the prosecutor’s obligation to apply to the Judge to have the victim’s statement presented in an alternative manner.
34. In Crown prosecutions, the Crown prosecutor should ensure the officer or investigator in charge advises victims of the outcome of sentencing and fully explains the reasons for the Judge’s decision. In all other prosecutions, prosecuting agencies should make the necessary arrangements within their agency or with the court to ensure victims are fully informed of the sentencing outcome.

APPEALS

35. Prosecutors should ensure the victim receives notification of an appeal including the hearing date and place and, in due course, the outcome of the appeal including any substitution of sentence on appeal.

OTHER RESOURCES

36. There are a number of agencies and resources available to assist victims. These include Victim Advisers (Court Services for Victims) and community agencies such as Victim Support, Women’s Refuge and various pamphlets and information services. Prosecutors should ensure they are aware of local services and resources so victims can be referred to these where necessary.
37. In practice, the officer or investigator in charge will make the referral to Court Services for Victims and other services but in appropriate cases prosecutors should recommend a referral.

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VICTIMS' CODE

38. Prosecutors should ensure the victim is aware of the Victims' Code and should themselves be familiar with it. The Code outlines victims' rights, details the services available to victims and sets out the complaints process (discussed below) for a victim to follow in the event they consider their rights have not been met.

COMPLAINTS

39. Section 49 of the Act confirms victims' right to complain if they have not been afforded their rights under the Act. Prosecutors who receive such complaints must deal with them promptly and fairly.
40. Under s 50A of the Act, Crown Law must include statistical information in its annual report about the number and type of complaints received by Crown Solicitors and Crown Law from victims. Crown Solicitors must ensure sufficient information about each complaint is recorded to enable Crown Law to comply with its reporting obligation.